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ABSTRACT

This report is a summary statement of the Michigan Advisory Committee's study on civil rights issues facing Arab American communities in Michigan. It is based on information received by the Committee at a community forum held in Dearborn, Michigan, in 1999. Six sections focus on: (1) "Introduction," including Arab American demographics in Wayne County and civil rights issues affecting Arab Americans (profiling, denial of due process in deportation hearings, and discrimination); (2) "Statements of Elected Officials"; (3) "Civil Rights Issues: Policing, Employment, and Religious Discrimination"; (4) "Civil Rights Issues: Profiling"; (5) "Civil Rights Issues: Secret Evidence in Deportation Actions"; and (6) "Committee Observations." The Committee observed that the Federal Aviation Administration has discriminatory profiling procedures, the secrecy surrounding the profiling criteria used by the Computer Assisted Passenger Screening System is a serious problem, the use in court of secret evidence against immigrants is unconstitutional, and the federal government needs to cease its targeting of Arabs and Muslims as suspect communities. Appended is a report by the Department of Justice to the Department of Transportation on the Department's Civil Rights review of the Federal Aviation Administration's proposed automated passenger screening system. (SM)

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ED 457 277

Michigan Advisory Committee to the U.S. Commission on Civil Rights

Civil Rights Issues Facing Arab Americans in Michigan

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May 2001

A report of the Michigan Advisory Committee to the U.S. Commission on Civil Rights prepared for the information and consideration of the Commission. Statements and observations in this report should not be attributed to the Commission, but only to participants at the community forum or the Advisory Committee.

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Letter of Transmittal

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The Michigan Advisory Committee submits this report, *Civil Rights Issues Facing Arab Americans in Michigan,* as part of its responsibility to advise the Commission on civil rights issues within the state. The report was unanimously adopted by the Advisory Committee by a 13–0 vote.

This report contains information received by the Michigan Advisory Committee at a community forum held in Dearborn, Michigan, on September 27, 1999. The Advisory Committee is indebted to the individuals who testified at the public meeting for their time and expertise and to the staff of the Midwestern Regional Office, U.S. Commission on Civil Rights, for the preparation of this report.

The Advisory Committee understands the Commission is charged to study and collect information relating to denials of the equal protection of the law, and trusts the Commission and the public will find the material in this report informative.

Respectfully,

Roland Hwang

Roland Hwang, *Chairperson*
Michigan Advisory Committee

Michigan Advisory Committee to the U.S. Commission on Civil Rights

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Detroit

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Lansing

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CHAPTER 1

Introduction

This report is a summary statement of the Michigan Advisory Committee's study on "Civil Rights Issues Facing the Arab American Community in Michigan" and includes conclusions and recommendations. Much of the report is based on information received by the Committee at a community forum held in Dearborn, Michigan, on September 27, 1999. The Michigan Advisory Committee to the U.S. Commission on Civil Rights is composed of 14 members. It is bipartisan, including representation from both political parties as well as the different geographic regions of the state. The Michigan Advisory Committee is also independent of any national, state, or local administration or policy group.

Arab American Demographics in Wayne County

Wayne County is located in the southeastern section of Michigan and has a population of more than two million residents. Detroit is the county seat.

The county is home to more than 100,000 persons of Arab ethnicity, making it the county with the largest concentration of Arab Americans in the United States. The Arab American community in Wayne County has many Arab ethnic groups: Egyptians, Iranians, Iraqis, Jordanians, Kaldeans, Lebanese, Moroccans, Palestinians, Saudis, Syrians, and Yemeni. Moreover, instead of being concentrated in one area, the Arab American community in the Detroit area is in numerous clusters throughout the county.

The Arab American population is similar in many respects to other immigrant groups in that Arab Americans have come to the United States seeking political freedom, economic opportunity, and social liberty. Most Arab Americans living in Michigan are secondary migrants, i.e., they have migrated to Wayne County after initially settling in another part of the country. The primary reason for this secondary migration is the attraction of the substantial and diverse Arab population in the county.

Civil Rights Issues Affecting Arab Americans

Similar to other immigrant groups, Arab Americans who come to the United States aspire to become part of the social fabric of the country. Unfortunately, prejudicial attitudes and discriminatory actions have been directed against Arab Americans. Though Arab Americans are proud to be Americans, persistent prejudice makes many feel like outsiders.

The Michigan Advisory Committee to the U.S. Commission on Civil Rights received a briefing on civil rights issues facing the Arab American community on August 13, 1998. Three topics of concern were stressed at the briefing: (1) the "profiling" and detaining of Arab Americans at airports and ports of entry to the country, (2) denial of due process to Arab Americans in deportation hearings, and (3) discrimination against Arab Americans.

Profiling

The "profiling" done by security personnel at airports is an example of one type of discrimination faced by Arab Americans. The U.S. Department of Transportation has determined that Arab Americans fit a common physical description of terrorists. As a result, Arab Americans legally traveling and conducting business are routinely and disproportionately detained and searched. This occurs despite evidence that terrorists belong to many ethnic groups throughout the world.

In addition, it is alleged that Arab Americans are often victims of employment discrimination. It is alleged that many Arab American immigrants who come to the United States with a high level of education are not given the opportunity by employers to work in the professional

field of their training. Hence, for many professionals, retail trade becomes the only available avenue for economic survival.

Denial of Due Process in Deportation Hearings

The Federal Antiterrorism and Effective Death Penalty Act of 1996 authorizes the federal government to present "secret evidence" in court against noncitizens who are considered a threat to national security. The act empowers the federal government to hold secret hearings, using evidence that cannot be challenged, on legal immigrants for deportation proceedings. The provision allows the Justice Department to arrest and deport noncitizens based on classified information shared only with a judge.

In these proceedings, it is alleged, Arab Americans are disproportionately denied the right to counsel, jailed without ever knowing or understanding the nature of the charges made against them, and such is done without a court trial. Moreover, it is alleged that such actions by the federal government target the Arab American community as evidenced by the fact that most of the 30 immigrants being held in U.S. jails since the law went into effect are Muslim Arabs.

Compounding the issue is that under the Federal Antiterrorism and Effective Death Penalty Act of 1996, any statements attributed to an individual in the past—statements protected by the First Amendment—can be used against individuals in deportation hearings. In addition, secret evidence can be used to strip resident aliens of the most basic rights and take them away from friends and family with no requirement that the federal government explain itself.

Discrimination

Two major issues within the educational setting are alleged to affect the civil rights of Arab Americans: the lack of bilingual education and the lack of cultural accommodation.

There are allegations from the Arab American community that the educational system often fails to address the social and cultural needs of Arab immigrant children. Many children are recent refugees fleeing wars in their homeland, and often Arab American children in the public schools are the first family members to be educated in the United States.

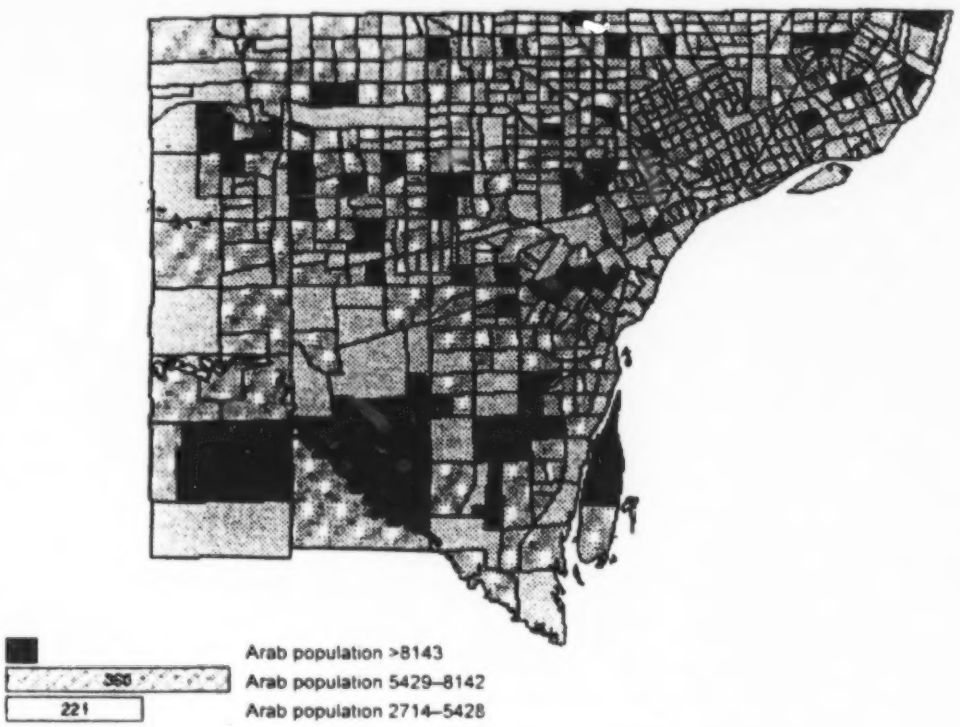
Many children of Arab ethnicity dress in a manner and hold to social customs that are very different from mainstream America. In the Detroit area, there have been numerous instances in area schools where Arab American students have been harassed and ridiculed on the basis of their dress and social behavior by other students. It is reported that there have been instances where school authorities have been insensitive and unwilling to act in support of the Arab American student population.

Additionally, for many Arab American students English is not their primary language. The availability of bilingual education programs in the school system has assisted many children in receiving a quality education. Attacks on bilingual education programs may be reducing the availability of equal educational opportunities to Arab American children.

There are also allegations of reluctance by local school corporations to hire Arab Americans in faculty positions.

FIGURE 1

Concentrations of Arab Americans in Wayne County by Census Tract



SOURCE: Midwestern Regional Office, U.S. Commission on Civil Rights, from 1990 U.S. census data.

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CHAPTER 2

Statements of Elected Officials

Written Statement of Carl Levin
United States Senator for Michigan

I am glad the United States Commission on Civil Rights is examining the civil rights issues facing Arab Americans. I am pleased the Commission chose Michigan as the focus of their study. Although Arab Americans live in all 50 states and the District of Columbia, many call Michigan home.

I am very concerned about a number of issues that disproportionately affect the Arab American and Muslim communities. I will focus on but two here: the use of secret evidence in immigration proceedings and passenger profiling.

John F. Kennedy once said, "The rights of every man are diminished when the rights of one man are threatened." The use of secret information in immigration proceedings, which the defendant can never see and cannot test in court, threatens to violate basic principles of due process and fundamental fairness, and therefore threatens the rights of every American.

The Attorney General and I have had several conversations about the Department of Justice's use of secret evidence. I have expressed my concern about the Department of Justice's and Immigration and Naturalization Service's continued use of secret evidence—primarily against Arab and Muslim immigrants—and the use of such evidence without virtually any limiting regulations.

At my request, the Attorney General came to Michigan to hear concerns about secret evidence from those who know its effects first-hand. At one of those meetings, I called on the Attorney General to suspend the Department's use of secret evidence until a new policy had been developed to limit its use to the most serious cases, namely those in which the alien has committed criminal activity that threatens national security. I was pleased when the Attorney General herself expressed concern over the use of secret evidence, and promised to issue regulations limiting its use. That assurance was given in May of 1999 but the regulations have still not been issued, which is terribly disappointing.

I have also been working with the Departments of Justice and Transportation on the issue of passenger profiling. Although passenger screening is an important component of airport safety, I am concerned that passengers of Arab descent are singled out for screening far more than other passengers. I have heard countless accounts from Arab American and Muslim passengers that traveling by air routinely involves humiliating and intrusive searches. Again, the Attorney General discussed this issue when she came to Michigan, and I was pleased that she promised to work with Arab American leaders in our state to ensure that airport searches and passenger screening programs are implemented in a nondiscriminatory manner.

I applaud the United States Commission on Civil Rights for taking on these and other similar issues for review. I look forward to working with the Commission on the many civil rights issues facing Arab Americans and acting to ensure that all people are given the fair treatment and respect they deserve.[1]

Statement on behalf of Spencer Abraham
United States Senator for Michigan

I am very pleased that the U.S. Commission on Civil Rights has convened a hearing on civil rights issues confronting the Arab American community. The choice of venue is most appropriate as Michigan is home to the largest number of Arab Americans in the United States.

[1] Letter to Constance Davis, director of the Midwestern Regional Office, U.S. Commission on Civil Rights, from Senator Carl Levin, July 6, 2000.

There are two pressing issues that I have been deeply concerned about. One is the use of classified or secret evidence in immigration proceedings, and the second is the use of passenger profiling. Both of these policies have been promoted by the Clinton administration as necessary tools of law enforcement.

Although we all agree that we must do all we can to eradicate crime, we must also abide by our Constitution and respect the civil rights of various communities in the United States. In the United States Senate, I have taken the lead on the issue of secret evidence, an issue which inordinately affects members of the Arab American community and those who immigrate to this country from the Middle East.

In 1996 I and my Senate colleagues successfully amended the secret evidence provision in the 1996 antiterrorism law. Because of the constitutional and civil rights concerns, this provision passed overwhelmingly in the Senate. Unfortunately, however, representatives of the administration insisted on deleting this provision and reinserted the secret evidence provisions in the law. I have expressed my concerns to the Attorney General and I am pleased to report she has offered to work closely with me to rectify this provision in the law.

I have also been working on the issue of airport passenger profiling. It is very clear to me that an inordinate percentage of Arab Americans are being stopped, questioned, and searched at numerous domestic and international airports. I have expressed my concerns both to the airlines who conducted the pilot program on profiling and the administration. Again, my discussions with the Attorney General have been quite positive. She has agreed to review the hundreds of complaints by Arab Americans that are documented at the national offices of the Arab American Anti-Discrimination Committee.

It is my sincere hope that the administration and the U.S. Commission on Civil Rights seriously address these problems. It is necessary not only to take a good hard look at the policies that are presently in place, but to address the practical effects of these policies and do what we can to present workable solutions.[2]

[2] Statement on behalf of Senator Spencer Abraham by Nina DeLorenzo to the Michigan Advisory Committee to the U.S. Commission on Civil Rights, community forum on "Civil Rights Issues Facing Arab Americans in Michigan," Dearborn, MI, Sept. 27, 1999, transcript (hereafter cited as Transcript).

Statement on behalf of Michael A. Guido
Mayor, City of Dearborn, Michigan

The mayor is pleased to provide comments to the U.S. Commission on civil rights issues facing Arab Americans, especially when Dearborn is such a diverse community that includes a large and growing Arab American population. In Dearborn over 70 different nationalities call the city home. The mayor continues to be a leader to make Dearborn a truly global community.

Good public service is the mayor's formula for good government. He has appointed many Arab Americans to key positions and as commissioners. His appointments to the City Planning, Telecommunication Boards of Appeals, Zoning Commission, Community Policing Board, Building Board of Appeals, and Economic Downtown Development Authorities are examples of the mayor's commitment to appointing diverse and representative board members and commissioners. The mayor has six members on his personal staff; two are Arab Americans.

The mayor's leadership on diversity issues is well known. The mayor has partnered with the League of Women Voters to become the principal funding source for our community's Wide Diversity Awareness Program. He has ordered a Diversity Awareness Program for city employees so that the city can continue to find better ways to service its citizens. His generosity in support of public events is well known by groups such as ACCESS, which recently received a contribution of $5,000 for a classroom in their new building. The mayor has contributed annually to the Lebanese American Heritage Club Scholarship Program, and the last two recipients of the $30,000 Mayor Scholarship to the Detroit College of Business have been Arab American students.

The city of Dearborn annually holds the largest Arab American festival in North America, and the mayor personally works with the festival organizers to provide city services to make the event a success. He also uses his influence with an economic development corporation in securing a $10,000 annual grant for this festival. The record will show the mayor consistently voting for this.

Mayor Guido believes actions speak louder than words and that his actions prove that he is both committed and involved in every aspect of

the entire city, including the Arab American community. He must provide the best public service possible for all citizens at the most reasonable cost, and the mayor understands that not everyone will agree with his policies. When the public is dissatisfied, elected leaders will be turned out of office. In the 1997 mayoral election, Mayor Guido received 87 percent of the vote; obviously, he has the support of the vast majority of the citizens.

The mayor feels strongly about his community and his work. He is passionate about democracy and protecting the values of family and community that has made Dearborn and this country the best in the world. The mayor knows this because he is first-generation American. Both of his parents were foreign born. And to use his phrase, "There's no greater honor than to be the mayor of your home town."[3]

Statement on behalf of Edward McNamara
Wayne County Executive Office

Wayne County owns Metropolitan Airport in the Detroit area. The Wayne County Executive Office has received several complaints from the Arab American community regarding profiling and discriminatory treatment of Arab individuals at Metropolitan Airport by various agencies.

Upon receiving the complaints, the Wayne County Executive Office organized a meeting with federal officials to discuss the matter privately in order to find a solution. Federal officials assured the Wayne County Executive Office that the profiling policy had undergone a thorough review from the U.S. Department of Justice, which had found nothing in the policy itself that is discriminatory based upon gender, race, or place of origin. However, federal officials acknowledged that complaints had been received from various Arab American agencies, and the agencies were investigating the allegations.

The Wayne County Executive Office followed the meeting with a hearing, held on November 30, 1998. Officials from the U.S. Department of Transportation, Immigration and Naturalization Service, Customs, and airline officials, as well as several members of Congress, listened to complaints from the community. More than 20 people testified to rude treatment and discriminatory treatment directed toward individuals who appeared to be of Arab or of Muslim backgrounds.

However, the community was not able to identify the exact discriminatory agent. Was it an airline agent? Was it a county official? Was it a federal agent? Who? So Mr. McNamara directed this office to meet with airline management officials and federal officials to discuss what Wayne County is doing to change the attitude of workers who encounter travelers. This office stated, unequivocally, that at Metropolitan Airport there would be no tolerance whatsoever of any discriminatory practices and if there is such a thing this office will take immediate action.

In addition to these directives, this office invited 10 members from the Arab American community to do a covert operation. Tickets were issued to these individuals and their treatment was observed.

This office learned the selection process is, in itself, discriminatory because one has to select the individual and ask them more questions. Moreover, the policy varies from airline to airline and from individual to individual. The second thing learned is that the majority of the people who do execute the policy are not trained to execute the policy, and individuals who are selected appear to be disproportionately individuals of dark skin and of Middle Eastern background.

This office continues to work with the Arab American community to resolve this issue. There will be more meetings on this topic and practices at the Detroit Metropolitan Airport. This office is committed to ensure that customer service, not only for the Arab American community, but for everyone that comes to the airport is one of respect and dignity.[4]

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[3] Statement on behalf of Mayor Michael A. Guido by Yussef Beydoun, Transcript.

[4] Statement on behalf of Wayne County Executive Edward McNamara by Terri Ahwal, Transcript.

CHAPTER 3

Civil Rights Issues: Policing, Employment, and Religious Discrimination

Arab Americans are often the victims of employment and religious discrimination. Forms of discrimination may include a denial to Arab American immigrants with high levels of education the opportunity to work in the professional field of their training, a denial to Arab Americans to assume management positions, refusal to hire Arab Americans who hold to different religious practices and/or different dress codes, and a lack of accommodation to individuals who adhere to different religions and/or dress codes.

COMMENTS FROM ARAB AMERICANS ON EMPLOYMENT AND RELIGIOUS DISCRIMINATION

Osama A. Siblani, Editor
The Arab American News

What Arab Americans ask of this society is to be treated as equals, not better than anyone and not lesser than anyone. For example, one day we're trying to set up a commission on counterterrorism. A Muslim American was nominated to the board, but was denied nomination. Why? Because it was a counterterrorism commission and it was assumed that Muslims are terrorists. So conventional thinking was how could putting a Muslim on a counterterrorism commission be justified? This is a violation of our rights.

Corporate America violates the civil rights of Arab Americans. At certain companies there are ceilings on Arab American employees in that they will not let them be in management positions. There are discriminatory hiring practices. Even the United States Census Bureau will not hire Arab Americans unless they are citizens. However, the Census Bureau hires other nationalities if they are alien residents and have a green card.[1]

Mohammad Elahi
Islamic House of Islam

There is a feeling in the Muslim community that in many ways the civil and constitutional rights of Muslims are being violated. Some of this religious discrimination is caused by ignorance and the basis of some is political.

There are cases of Muslim women fired from their work or rejected during the interviews for jobs or for college admission because they wear their religious head scarves. There are cases of Muslim men fired from their job or rejected during job interviews because they wear a beard, a religious requirement. Recently, there was a Muslim police officer in New York suspended from his job because he wore a beard. Then there was a case of nine Muslim men ousted from an airplane because they started their daily prayer, and out of ignorance the pilot thought that they were creating a disturbance on board and they were removed from the plane just because they were doing their daily prayer.[2]

Abed Hammoud
Arab American Political Action Committee

AAPAC did a count of the city of Dearborn employees and found that only 2 percent of the city's full-time employees are of Arab American descent. When part-time employees are included, the total is 4 percent.

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[1] Statement of Osama A. Siblani to the Michigan Advisory Committee to the U.S. Commission on Civil Rights, community forum on "Civil Rights Issues Facing Arab Americans in Michigan," Dearborn, MI, Sept. 27, 1999, transcript (hereafter cited as Transcript).

[2] Statement of Mohammad Elahi, Transcript.

One interesting factor about the city of Dearborn is their coding of minorities. Arab Americans are not officially a minority, but in the city of Dearborn there is a letter code, so that a listing of Arab Americans in municipal employment is straightforward.[3]

Imad Hamad, Regional Director
Arab American Anti-Discrimination Committee

There is an historical mistrust between the Arab American community and law enforcement agencies. One factor fueling the mistrust is the provision of the retroactivity of law, which holds that if a person was convicted of a felony, served his/her sentence, and are a green card holder, this criminal record can be used as grounds for deportation retroactive indefinitely. There are many of these cases where families are being torn apart for something that was done years and years ago.

Second, the Arab American community understands illegal entry to the United States is a problem, and the INS is overloaded and under pressure. But at the same time there seems to be different treatment for different people. The Arab American community feels that its members are treated differently by the INS.[4]

Ismael Ahmed, Executive Director
Arab Community Center for Economics and Social Services

While ACCESS does not maintain specific discrimination records, it is clear that there is a great deal of real and perceived discrimination against Arab Americans, much of which does not get documented in the regular ways. That is because in many instances Arab Americans who are new to this country have a fear of authority, and not being citizens or familiar with current laws have good reason to fear reporting such things.[5]

William Ali

One thing that is misunderstood is that there are different groups of Arab Americans, such as Palestinians, Lebanese, and Yemenese. And each of them have traditional differences. Some have religious beliefs that others do not have. Some are more conservative than others. The Yemeni community, of which I am a part, has no real representation in the city of Dearborn.

This problem also affects Islamics within the Arab culture, because when one hears "Islamic" there is an automatic tie-in with the Arab community, and then in most cases a tie-in to terrorism. There is no teaching of Islamic customs, and if there were such education, it would help a lot.[6]

Zouher Addel-Hak

The situation in Dearborn is very bad. Jobs are not always posted in the city of Dearborn and sometimes are just given to political friends. If Arab Americans in this community choose to practice our constitutional rights and speak out on political issues, like the term limit petition which I helped to put on the ballot in 1997, they are harassed. That should not happen here.[7]

COMMENTS FROM ARAB AMERICANS ON POLICING

Maya Berry, Government Relations Director
Arab American Institute

The FBI is a law enforcement agency that is supposed to protect us. As Arab Americans and as Americans of Arab descent and as a minority group interested in having our rights protected by all of the agencies in place, it is very disconcerting when there are situations such as occurred during the Gulf War where the FBI puts out a press release saying, "We are going to be meeting with Arab Americans to talk about their potential victimization of hate crimes and also investigating them about activities in their local communities."

For the FBI to suggest that there needs to be special outreach efforts to find that information or solicit that information is very disconcerting. The issue is that there is no distinction being made by the FBI between their hate crime unit and the units that are looking to investigate potential terrorist activity. So the Arab American community finds itself in a situation where community members are advised to be cautious.

There is a coalition within the Arab American community which puts up flyers saying, "Do not talk to the FBI." This too is very difficult for us

[3] Statement of Abed Hammoud, Transcript.

[4] Statement of Imad Hamad, Transcript.

[5] Statement of Ismael Ahmed, Transcript.

[6] Statement of William Ali, Transcript.

[7] Statement of Zouher Addel-Hak, Transcript.

to oppose because information gathered by FBI agents, who are supposed to be hired to protect, are sometimes used as secret evidence against Arab Americans.[8]

Ismael Ahmed, Executive Director
Arab Community Center for Economics and Social Services

An area that ACCESS deals with has to do with law enforcement mainly at the local police level, primarily dealing with profiling, physical abuse, and verbal threats. ACCESS has taken up a few of these cases in the past, but ACCESS usually encourages individuals to seek legal aid. Understand that when one sues a policeman or a police station, many Arab Americans feel they are taking their lives in their hands and that it is a very dangerous thing to do. So most of these do not get reported.

Overall, though, ACCESS believes there has been a great deal of improvement in terms of wholesale traffic tickets given to young Arab Americans, in the handling of minor incidents, and the overuse of force. ACCESS also holds that in a city like Dearborn, where 22 percent of the population is Arab American and 54 percent of the young people are Arab American, effective law enforcement must include more Arab Americans on the force, and there has been some improvement in this area as well.[9]

Zouher Addel-Hak

Arab Americans, the minute they get arrested in the city of Dearborn, they are called names. I can cite at least five cases where similar crimes are committed and non-Arab people get slapped on the hands with a fine, while Arab Americans spend time in jail. That happened to an Arab American woman. She is spending 60 days in jail for discharging arms supposedly on New Year's Eve. She has four children and is living on welfare.[10]

COMMENTS FROM THE DEARBORN POLICE DEPARTMENT ON POLICING

Ronald DeZeal, Chief of Police
Dearborn Police Department

I have been chief of police for the city of Dearborn for 14 years, and I can tell you unequivocally that I am and my top administrators are totally, absolutely committed to the protection of the civil rights of all persons. Most of you know that the city of Dearborn has labored under a longstanding reputation of being a white racist community. That reputation, probably well deserved, was developed many, many, many years ago under a segregationist mayor. That mayor has been dead for over 20 years. This is the third administration since that particular mayor.

The city and the police department have dedicated themselves to changing the reputation of the community and welcoming all ethnic groups. Dearborn today is not an isolated community but a destination, whether it be for educational purposes, for shopping purposes, for employment purposes or recreation purposes, for people of all racial and religious backgrounds.

The city takes great pride in the diversity of its community and is very, very proud of the very large Middle Eastern community living here. They have provided the community with a most vibrant commercial district, and great diversity in the schools, in the business community, and in the religious community.

In the 14 years that I have been chief of the Dearborn Police Department, I have had the opportunity to hire approximately a hundred new officers. Seven of those officers have been Arab Americans. I wish the number was much greater, however there are very few applicants from the Arab American community. Perhaps because of ethnic background and cultural background, especially amongst first generation, a career in law enforcement is not high on the list of many very talented young African Americans as well as Arab Americans.

[8] Statement of Maya Berry, Transcript

[9] Statement of Ismael Ahmed, Transcript

[10] Statement of Zouher Addel-Hak, Transcript

The department places a very high emphasis on cultural diversity. At least once a year and generally twice a year, each officer in the department is mandated to attend a cultural diversity training session. We go through different ethnic groups depending on the year and depending on the issues and depending on the available lectures.

A little over two years ago, the city's first community-policing center was established on Warren Avenue, which is the center of the Arab American commercial and residential district in our community. It is staffed with two full-time police officers as well as a full-time civilian, and it is backed up by other officers when necessary. In addition, about six months ago a law enforcement coalition was formed to discuss the issue of racial profiling. So the community has a chief of police that is not only very knowledgeable in the area of racial profiling and civil rights protection but one that feels very strongly and very sensitively to it.[11]

[11] Statement of Ronald DeZeal, Transcript.

CHAPTER 4

Civil Right Issue: Profiling

In 1997 the White House Commission on Aviation Safety and Security was established to examine the state of aviation safety, security, air traffic management, and planning for the future of aviation in the next century. The commission released its final report in February 1997, and among the 53 recommendations to improve safety and security, a proposal to "complement technology with automated passenger profiling" was included.[1]

For many years the Federal Aviation Administration (FAA) has required airlines to perform a variety of security checks to ensure the safety of the flying public. Several of these procedures are quite familiar to airline passengers, such as the request for photo identification and baggage control questions. Four types of security measures are required by the FAA.[2]

1. *Photo identification.* Airlines are required to request a valid government-issued photo ID from all adult passengers who check baggage. If a passenger does not have such ID, or two other forms of acceptable identification, the airline may still allow the passenger to fly by applying alternative FAA-approved procedures.
2. *Passenger questioning.* Airlines are required to ask all passengers a series of questions relating to their baggage and items they have been asked to carry on the flight.
3. *Passenger screening.* Airlines are required to conduct a security screening of all passengers, using routine information passengers already supply to their airline in order to purchase a ticket and fly. The purpose of the screening is to identify baggage that merits additional attention. The FAA maintains the screening criteria are based on travel-related and other nondiscriminatory factors associated with past security-related incidents and that the screening criteria must remain confidential to protect their usefulness.
4. *Physical search of baggage.* Baggage searches are conducted both randomly and selectively and may be conducted at the ticket counter, security checkpoint, or gate.

By 1998 the implementation of an automated profiling system, Computer Assisted Passenger Screening (CAPS), was operational industry-wide. Such profiling involves the collection of data on passengers prior to their boarding a plane. The information is entered into a computer database that determines whether the passenger poses a potential security risk and should be subjected to heightened security procedures. According to the commission report, "passengers could be separated into a very large majority about whom we know enough to conclude that they present little or no risk, and a small minority about whom we do not know enough and who merit additional attention."[3]

Different profiles are to be employed depending upon whether the travel is domestic or international, and the criteria for selection are secret. The Federal Aviation Administration denies that its profiling procedures are discriminatory and insists that the CAPS system does not target any group based on race, national origin, or religion.

[1] *See* Arab American Institute, *The Department of Justice and the Civil Rights of Arab Americans*, March 1998.

[2] U.S. Department of Transportation, Federal Aviation Administration, *Information on Airline Security in the U.S.*, 1997.

[3] *See* Arab American Institute, *The Department of Justice and the Civil Rights of Arab Americans*, March 1998.

At the request of the commission, the Department of Justice conducted a civil rights review of the automated passenger screening system. The Department's principal finding was that the FAA's proposed Computer Assisted Passenger Screening system would not discriminate on the basis of race, color, national or ethnic origin, religion, or gender. The report also stated that the "CAPS system does not include as a screening factor any passenger traits that may be directly associated with race, color, national or ethnic origin, religion, or gender, such as passengers' names or mode of dress."[4]

In addition to FAA security checks at most airports and border crossings, U.S. Customs officials can detain passengers for lengthy periods—sometimes days—without court approval in their attempts to interdict drugs and other contraband. When Customs believes there is reasonable suspicion of contraband with the traveler, Customs may detain a person and ask for the traveler's consent to medically supervised body searches. If consent is not given, Customs may proceed with X-rays and physical exams.

The procedure has been upheld by the Supreme Court. Under revised procedures, Customs officials now work with U.S. Attorneys who are used to provide an outside opinion on whether Customs officials acted on a reasonable suspicion when detaining a traveler.

Comments from Arab Americans on Profiling

Radwan Khoury, Executive Director
Arab American and Chaldean Council

Twice I have been profiled, both times at the Washington, D.C., National Airport. On the first occasion, the agent said that I had a special ticket and was told that I met their profile.

I said, "What profile are you talking about? Is it because I have the Middle Eastern look?" The attendant said, "No, I cannot really tell you anything. It is just you meet our profile." I was told that my suitcase would be the last one to go on the plane and a yellow ribbon will be placed on it.

This treatment is really bothering people. There are a lot of people that complain to the agency about this profiling issue.

The second time I was profiled the lady treated me a little bit softer than the first one in terms of the way that she handled herself. Again, she was very apologetic and refused to tell me how I met the profile. I said, "If I meet the profile once or twice, how is it that I do not meet it 12 times a year, if this is the profile that you're talking about?"

The same situation happens by U.S. Customs at Windsor. They tell you that you meet the computer pick. I would understand if every fifth car was stopped. But it is not a fifth car they stop, it is myself and my friends they always stop.[5]

Abed Hammoud
Arab American Political Action Committee

Profiling is not a new concept that is new, nor is it illegal. It has always been recognized as a crime-fighting tool. Actually, the FBI has people called profilers. Some of them come and train prosecutors when we have training at the prosecutor's office. So profiling can work if it's done right. In the case of Arab Americans, it is done wrong.

Moreover, it is hurting Arab Americans and all citizens of this country. I believe it's hurting the country and it's endangering us when we fly on the planes. In any country in the world one can buy a U.S. passport for $50 and can put any country of origin on it. This profile does not work. People can change their looks. So the narrow view of security, the narrow view of focusing on some passport of some nationalities misses the point. It is dangerous, besides hurting Arab Americans and offending us.

Profiling comes with a preconceived mentality, and the mentality is with law enforcement agencies and goes from the movies in Hollywood always portraying Arabs as criminals, the Muslims as the terrorists.

Also, profiling of Arab Americans has extended beyond the borders of this country mandated by the FAA. Recently, upon my way back from Leon, France, to Amsterdam, the agent

[4] U.S. Department of Justice, *Report by the Department of Justice to the Department of Transportation on the Department's Civil Rights Review of the Federal Aviation Administration's Proposed Automated Passenger Screening System*, Oct. 1, 1997. The entire report is attached as an appendix to this report.

[5] Statement of Radwan Khoury to the Michigan Advisory Committee to the U.S. Commission on Civil Rights, community forum on "Civil Rights Issues Facing Arab Americans in Michigan," Dearborn, MI, Sept. 27, 1999, transcript (hereafter cited as Transcript).

looked at my passport and asked, "When was the last time you were in Lebanon?" as Lebanon is shown on my passport as my place of birth. What does that have to do with anything? He called his supervisors. It was unbelievable treatment. I could not believe it happened to me, and the agent said, "It's an FAA mandate. We're sorry about this." This is airport profiling and it is not effective.[6]

Imad Hamad, Regional Director
Arab American Anti-Discrimination Committee

Airline profiling continues despite all the good efforts that have taken place to eliminate it. I know that Congressman David Bonior held a hearing at the airport with the FAA officials, U.S. Customs, and the INS. I know that Congressman Dingell did the same. I know that Congressman John Conyers did the same as well as the senators. Everybody expressed concerns. The Wayne County Executive, the Department of Civil Rights, name it. However, the problem continues. Nothing changes.

If you look at the profiling, it mainly targets Arab Americans, and Muslims specifically. And airline profiling does not exclude other minorities. There are cases that included African Americans, some simply for wearing the traditional African custom or some African Americans who happen to be Muslims and they have similar names like Arabs.

The bottom line is that congressional guidelines have been put forward, and that is where the problem lies. The Arab American community has been talking about airline profiling since 1997. None of the involved agencies have proved a case that this profiling was effective enough to catch one bad person. On the contrary, most of the people who've been profiled were professionals, doctors, attorneys, even law enforcement agents who happen to be of Arab American descent.[7]

Maya Berry, Government Relations Director
Arab American Institute

Arab Americans have achieved a great deal in this country. We have been here for three, four, or five generations. Many things have happened that we have had a great deal to be very pleased about.

Having said that, one of our greatest concerns is the fact that the government is requesting that passenger profiling methods be employed for foreign air carriers. This is a significant concern because the civil rights in place here in the United States do not necessarily apply to other countries and as we advance this need to do profiling.

Moreover, we do not know what is contained in the actual profile. Those things are secret. We do not know if it is race or ethnicity or the country of destination. Well, if I happen to travel to Lebanon or Syria or Egypt or Jordan or Palestine, and those countries are flagged, then I will be disproportionately affected. However, one will notice on a plane traveling to Syria with some 200 passengers, the five or six that are Americans on that flight were the ones profiled. So even in those cases, you find discrepancies.[8]

Ismael Ahmed, Executive Director
Arab Community Center for Economic and Social Services

Regarding profiling, it is the Arab Americans in particular who are stopped at airports. I, myself, have been stopped both domestically and internationally. I spoke recently with Senator Spencer Abraham, who said when he does not wear a suit he gets stopped as well. So Arab Americans of all types are affected.

A good example of this is a visit that I took to Israel. I visited Israel and then later the West Bank. I got what was the normal stop at the Israeli airport, which was being detained in a room for over three hours and questioned and strip searched. But historically Israel is a war zone and there is some expectation of that behavior. But when I arrived in the United States, I was stopped again and asked the same kinds of questions. Obviously, there was a connection between the Israeli government and the American airport authorities on this question, designating an individual, based on their own views, and then following up that kind of enforcement. This is not unusual. We have here a situation in which foreign policy affects the view of who and what Arab Americans are.[9]

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[6] Statement of Abed Hammoud, Transcript.

[7] Statement of Imad Hamad, Transcript.

[8] Statement of Maya Berry, Transcript.

[9] Statement of Ismael Ahmed, Transcript.

Mohammad Elahi
Islamic House of Islam

Locally, a few months ago there was a briefing session at the airport by the officials concerning the traveling process and how everybody will be treated with respect and courtesy and professionally at the airport. The Muslim community has no problem about rules and regulations for the safety of everyone.

I have traveled a lot. In some cases, I was stopped and in many cases I was not. So I could not say for sure, but something was clear that we are not over with the feeling of being discriminated against. We need better legislation and better training for people in charge of enforcing that legislation on the public.[10]

COMMENTS FROM FEDERAL OFFICIALS ON PROFILING[11]

Dennis L. Reading, Federal Security Manager
Detroit Metropolitan Wayne County Airport, Civil Aviation Security Field Unit

The system that is used by the FAA is a Computer Assisted Passenger Screening [CAPS] system. It is based on criteria generated during the passenger reservation system with the air carrier process. What the CAPS system is designed to do is to assign risk factors which are sensitive in nature based upon itinerary from whatever any individual would put into the computer reservation system with the air carriers.

Now the computer system itself actually makes the criteria or decision based upon the criteria in the passenger reservation system as to whether or not the individual ends up being identified as a selectee.

Before 1996, the FAA did not have a Computer Assisted Passenger Screening system in place. It was a manual system that the FAA put out to the carriers that had specific criteria. At that time, it potentially could lend itself to where an individual could possibly twist or bend the system a little bit.

Obviously, under those circumstances, profiling was based upon somebody looking at the way a passenger was dressed or because of their ethnicity or mannerisms, which has nothing to do with the current computer assisted process.

There are a number of different factors that go into the CAPS process. It is sensitive in nature and not openly publicized. Technically, it is not classified in the true sense of the word from the governmental standpoint. It is simply sensitive security information which, if divulged to the full public, could possibly give someone who is intent upon trying to circumvent the system or introduce an explosives device into the system assistance as far as that process is concerned. So that is why the information is not openly publicized.

So before 1996, the human element to quite a degree was involved in the screening processes. Since the inception of the Computer Assisted Passenger Screening system, the FAA has had numerous meetings with members of Congress to learn of specific instances of discrimination being applied against Arab Americans and this connotation of a profile process at Detroit Metro Airport. Both Admiral Flynn as well as FAA Administrator Jane Garvey have come to Detroit to listen to the specific complaints or allegations of discrimination against Arab Americans here at Detroit Metropolitan Wayne County Airport.

The FAA has established a customer service committee specifically consisting of most of the Arab carriers at the airport, including Northwest Airlines. We have representatives from the airport authority, itself, both with airport—the administrative staff offices and the director's office as well as airport operations that are members on our committee. As a matter of fact, two of the individuals that are members on our committee that work for the airport, in fact, are also Arab Americans.

From Wayne County's standpoint, the FAA has had numerous meetings with Mr. McNamara, and he has mandated that the FAA take specific steps to ensure that there were no forms of racial or ethnic discrimination, not just against Arab Americans but any ethnic group or background in our customer service relationships with the American public.

In that effort, since we did have specific complaints that were lodged by the Arab American community, two main issues are of concern. First, are there any specific instances with reference to the complaints of discrimination by the Arab American population that could be investigated by the agency? Second, the agency wants to establish a model of customer service that assures, where there is a human element with reference to the public whether that is curbside

[10] Statement of Mohammad Elahi, Transcript.

[11] Representatives from the U.S. Customs Service declined an invitation to speak to the Advisory Committee.

ticket counters, screening checking points, or boarding gate locations, that attendants are fair, consistent, and sensitive to ethnic issues.

Currently, the Computer Assisted Passenger Screening system is 100 percent operational. A periodic review was facilitated by the FAA, but the review itself was done by the FBI, CIA, and DOT representatives to make sure that it is fair and across the board and does not target any specific groups. There was also a recommendation for a post-implementation review of CAPS, but that still has yet to be scheduled.[12]

Carol A. Jenifer, District Director
Immigration and Naturalization Service

In the Detroit district of the Immigration and Naturalization Service, there are 265 employees in six different locations. There are about 100 employees at the district office in Detroit, and a contingent of inspectors and smaller support staffs at the Detroit-Canada Tunnel, the Ambassador International Bridge, the Detroit Metropolitan Airport, Port Huron, and Sioux St. Marie. There are two people at the city airport and then some inspectors at Marine City and Algonac.

The mission of the INS is to enforce immigration laws. It includes inspecting arriving immigrants or individuals coming into the country; identifying, apprehending, and removing people who violate immigration laws or the terms under which they are allowed to come into the country; and granting benefits, which can be things like allowing for one to become an immigrant or a green card holder, a legal permanent resident, or granting citizenship.

The INS also does work involving refugees, which covers a myriad of things. The INS does the interviews for refugees, conducts stateside inspections, and does removals.

Last year, about 32 million people came back and forth into this country in this district because this area is on the Canadian border. There are just over 100 people—nor the time nor the inclination to just point out people and say, "You come in, you come in, you come in. We're going to take this nationality, this nationality." There are far too many people.

Two processes get the most attention and cause the most problems. The first one is the inspection process. INS shares that process with Customs. If a person is in the tunnel or on the bridge or one of the land borders, essentially what one may encounter is a person either in a white shirt or a light blue or navy blue shirt, which would be customs, who would ask you certain questions. Those questions are intended to determine just on a quick, if one is eligible or should be coming into the United States. It is also used to determine if that person has anything declarable.

If the person satisfies the inspector at that point, he or she is allowed to go. If there are people who do not satisfy at that point, they are sent inside to a secondary inspection. If the question is about whether or not the person came legally into the United States because of his or her immigration status or citizenship, he/she goes to INS. If the question is about something that is carried into the country, then he or she goes to customs.

It is instructive to know that there are two different ways in which this is done. Normally, when a person comes inside, he or she is asked additional questions to which the person has to satisfy the inspector. In the majority of the cases, people are then sent on their way. Because of problems at the INS in terms of staffing, some people have had to wait one or two hours; other than that, most people will get to move forward.

It seems that 80 to 90 percent of the INS complaints are regarding the inspection process. There are several reasons for this. First, there is a failure to understand the process. The inspection process can be intimidating, particularly if one is not sure what it is, particularly when one is confronted and asked questions about place of birth, how long he or she has been out of the country, documents the person has, etc. Second, people often do not understand the decision. Normally they will complain because the decision was not in their favor but also because they just do not understand it.

There are some solutions that the INS has been trying over the past six years. First, the INS has done mandatory customer service training for every single employee, and noting if by doing better training in that particular area was there a decline in the number of complaints. In addition, the INS holds outreach meetings with the community so as to better disseminate information.[13]

[12] Statement of Dennis L. Reading, Transcript.

[13] Statement of Carol A. Jenifer, Transcript.

CHAPTER 5

Civil Rights Issue: Secret Evidence in Deportation Actions

The use of classified, or "secret," evidence in certain immigration proceedings was first authorized in 1955. Essentially, the use of secret evidence allows the Immigration and Naturalization Service of the U.S. Department of Justice to use as evidence during deportation proceedings information that is not shared with the individual facing deportation. The lack of a defendant's access to the secret evidence makes it nearly impossible for him or her to make a defense against serious deportation charges and makes it possible for an individual with extensive family and community ties in the United States to be deported on the testimony of unnamed informants whose charges are taken as fact and cannot be challenged.

In 1996, following the World Trade Center and Oklahoma City bombings, Congress passed the Antiterrorism and Effective Death Penalty Act. Though the earlier 1955 provisions continue to be used as federal authorization for the use of secret evidence, one of the byproducts of the passage of the Antiterrorism and Effective Death Penalty Act of 1996 has been the increased use of secret evidence in proceedings against immigrants.

While court rulings have held that residents in the United States are entitled to the same constitutionally guaranteed protections afforded to citizens, secret evidence is being introduced in trials across the country. The controversial provision has been used in approximately two dozen cases in which the Immigration and Naturalization Service (INS) asserted national security concerns as the basis for depriving immigrants of the right to examine and confront adverse witnesses and evidence. All of the cases are against Arab or Muslim immigrants.

In October 1999, a federal judge ruled that the use in court of secret evidence against immigrants is unconstitutional. This was the first time a federal court weighed the constitutionality of the use of secret evidence and found it unconstitutional. U.S. District Judge William Walls in Newark, New Jersey, ordered the defendant in the case, Hany Kiareldeen, a 32-year-old Palestinian immigrant, released. Kiareldeen had been held by the INS since March 1998 pending deportation proceedings because the FBI's Joint Terrorism Task Force had developed secret information that he had hosted a meeting at his home with terrorists planning the World Trade Center bombing. The FBI reports detailing the source of the information linking Kiareldeen to terrorists were not divulged to Kiareldeen or his attorneys. Kiareldeen, who had lived in the United States since 1990, denied the charges and alleged that they were likely to have come from his ex-wife with whom he was having a child custody dispute.

For the past three years, Mazen Al-Najjar has been in a Florida prison because the federal government claims it has secret evidence that he is linked to Middle East terrorists. The government will not disclose who the accusers are, what the nature of the evidence is, or how Al-Najjar can defend himself. U.S. government officials claim that disclosing the evidence against Al-Najjar would expose secret intelligence.[1]

According to INS agents, Najjar's accusers label him a "mid-level" member of a fund-raising group linked to the Islamic Jihad and Hamas terrorist organizations. Al-Najjar has a wife and three daughters living with him in the United States and has not been indicted or convicted of any crime.[2]

Eight individuals from the Arab American community spoke to the Advisory Committee

[1] "U.S. keeps man jailed on secret evidence," *Chicago Sun-Times*, May 24, 2000, p. 40.

[2] Ibid.

about the use of secret evidence by the INS and the pernicious effect it has on the Arab American community. A representative from the INS also spoke to the Advisory Committee.

Comments from Arab Americans on Secret Evidence

Maya Berry, Government Relations Director
Arab American Institute

Secret evidence has been in place since the 1950s in terms of immigration laws. The most recent laws, both passed in 1996, are the Anti-terrorism Bill and the Immigration Reform Bill. Both contain provisions that allowed the increased use of secret evidence. It is important to note that secret evidence in these cases can and is used against legal resident aliens. Many of those accused were on their way to becoming citizens who have lived here for years, whose wives and children are American citizens. Also there is not a single case currently pending that is using the 1996 laws as passed. They are relying on the 1950s laws in terms of deportation proceedings. It is the U.S. Department of Justice that continues to use secret evidence. At every opportunity that a judge has ruled that secret evidence has not been necessary, the government still has chosen to move forward with its use.

It is important to note that Irish immigrants were the only other group apart from Arabs and Muslims in deportation proceedings where secret evidence was being used. When things went well, under Senator Mitchell's leadership, in Ireland, all of the proceedings against Irish immigrants were dropped. It is very difficult, then, not to conclude that these cases are politically motivated proceedings targeting specific communities.[3]

Ismael Ahmed, Executive Director
Arab Community Center for Economic and Social Services

The use of secret evidence is a serious problem as it relates to immigrants in general, and the Arab American community in particular. In the recent furor around some of the terrorist activity, laws have been passed that really are not good either in a legal sense or in a moral sense.

These laws basically leave the person being accused, anyone who is not a citizen—and for Arab Americans that is about one-third to one-half the population in the Detroit metropolitan area—without recourse to civil rights protections from some pretty drastic measures on the part of government. These include the person being jailed, discharged, and sent out of the country within a few days of notice or no notice and, in some cases, sent to what is their certain death in places where they have left a repressive situation.

Arab Americans are now being held in custody. Their situation is not known, nor is it known why they are jailed. If other voices do not join the Middle Eastern community about these civil rights violations, these laws will hold and grow and threaten the rights of all Americans.[4]

Radwan Khoury, Executive Director
Arab American and Chaldean Council

I am a Palestinian, and in terms of secret evidence and the Palestinian community, a lot of the intellectuals are afraid to speak because if they speak up, even if they are pro-peace, they are afraid of going to jail for a couple of years because of the secret evidence situation. So a lot of people are not able to freely exercise their right to freedom of speech. This is a great concern in our community.[5]

Abed Hammoud
Arab American Political Action Committee

I am an attorney with the county prosecutor's office. The use of secret evidence is contrary to the Constitution. In my work, when our office alleges a criminal act, the defendant is entitled to every piece of evidence our office has and intends to use against him. It is a continuing order of discovery received from courts. Every time any piece of evidence is received, the prosecutor must contact the defense attorney and share with him or her the new evidence.

It is shocking and dismaying when I come back to being Arab American, and not a prosecutor, to accept being treated less well than criminals when it comes to deportation proceedings. I have criminals who have walked away from jail

[3] Statement of Maya Berry to the Michigan Advisory Committee to the U.S. Commission on Civil Rights, community forum on "Civil Rights Issues Facing Arab Americans in Michigan," Dearborn, MI, Sept. 27, 1999, transcript (hereafter cited as Transcript).

[4] Statement of Ismael Ahmed, Transcript.

[5] Statement of Radwan Khoury, Transcript.

in Wayne County because we could not start the trial on time.

On the other hand there is a doctor, Dr. Al-Najjar from Florida, who has been detained for months on the basis of secret evidence. That is what happens in this country to Arab Americans. Our Constitution reads: "No person shall be deprived of life, liberty or property without due process of law." It does not say, "No citizen." It never specified from what national origin you have to be. Are Arab Americans less than persons? That is how I feel when I hear about secret evidence stories.

When authorities are confronted about the use of secret evidence, they always bring up the issue of national security. Those words are so important, yet so loosely used every time it comes to the Arab American community. What is national security? Everything is national security. Everything is not national security.

A concern in the Arab American community is that when the secret evidence is finally revealed, the evidence often turns out to be about the political activity of that person. This simply means that anybody in our organization, the Arab American Political Action Committee, can be called in tomorrow and questioned. When we started our organization, no exaggeration, five of our members, professionals, were contacted by the FBI within the next three months after we started.[6]

Imad Hamad, Regional Director
American Arab Anti-Discrimination Committee

The use of secret evidence is pending in more than 20 cases around the country. It is not a local matter; it is a national issue. The local Arab American community here has witnessed two cases dealing with this provision, one for a young Lebanese gentleman who was deported. He was in jail for a year and never knew why. It ended up that he was deported based on some technicalities without having the chance to know the evidence that was used against him.

The second case was mine. I came to this country back in 1980. I tried to adjust my status for at least 12 years. Through this ordeal, the INS chose to use different tactics. It started with issues of technicalities regarding my visa status. Then it ended up by reviewing my case to see if it falls within the provisions of the use of secret evidence. And this is where, yes, my case is over but others are not. It's still an issue and a challenge.

Still today I do not know what was the evidence against me. Regardless, the quality and the nature of the secret evidence used did not justify my ordeal for 12 years to gain my permanent residency. I lived in this country long enough. I do not have a simple traffic ticket on my record.

The challenge here is the question of due process and the Constitution of rights. It is as simple as that. Charge an individual or free him. If I were to be convicted, convict me. Put the charge forward. Prove your case. There is nothing to keep this evidence secret.

It is very chilling when you go to court and you are to be prosecuted and to be deported and separated from your family for an evidence that you don't know what it is. You have no right to see it. You don't have the right to defend it. It's like you go to the court, like you're a mute, deaf mind under the mercy of the custody of an FBI agent or an INS officer and whatever they can make the case to the judge.[7]

Nassar M. Beydoun, Director
Arab American Chamber of Commerce

The INS attempts to deport political activists through the use of secret evidence of their alleged ties with terrorist organizations. The government has also brought extradition proceedings based on unsubstantiated charges of engaging in terrorism. This country has a history of attacking certain ethnic groups and if one looks through the history of this country, since the days of the American Indians and through the African Americans, Chinese, Italians, Irish, Jews, and Hispanics have faced discrimination. Now it is Arab Americans who face the discrimination and who bear the brunt of repression these days.[8]

Mohammad Elahi
Islamic House of Islam

The use of secret evidence is an obvious example of discriminatory harassment against the Muslim community insofar as the victims of this

[6] Statement of Abed Hammoud, Transcript.

[7] Statement of Imad Hamad, Transcript.

[8] Statement of Nassar M. Beydoun, Transcript.

law are Muslims. Nobody else suffers under this tactic except the Muslim community.

There have been some promising situations. There was a meeting between the representatives of the Muslim community and the FBI in New York, and they started dialogue to develop some mutual understanding in dealing with the cases of concern for the Muslim community.

In addition, recent legislation has been sponsored by Congressman David Bonior and other congressmen against the use of secret evidence. If it is passed, it will increase respect for the Constitution and also the civil rights and democratic values in the society.[9]

Comments from Federal Officials on Secret Evidence

Carol A. Jenifer, District Director
Immigration and Naturalization Service

If a person is encountered in the United States by an immigration officer, he/she has several options to pursue if he/she is not in a legal status. First, the person can leave the country voluntarily. Second, the individual can request a hearing before an immigration judge and a determination is made as to whether or not the circumstances permit that person should stay or has to leave.

If the person is ordered to leave and the judge will agree, the individual can leave on his/her own volition. They do not need anything from Immigration. They have a ticket in hand and they leave. Or the person can be what INS calls "order deported," in which case the person has to present himself or herself to Immigration, and INS may actually escort that person out of the country.

If a person does not agree with the decision of the judge, there is an appeal process. The appeal process may, again, allow additional time for the individual to stay. There are some groups who do not have options as it relates to this—groups such as criminals. If a person is a convicted criminal of an aggravated felon, by law there are two things that can happen: mandatory detention and then expedited removal. There are some options even after deportation. Once returned to a person's home country, he/she may file for a waiver and if the waiver is granted, a visa may be granted by the State Department that would allow for reentry into the country.

In this matter, I want to state something to the Commission. I personally have been the victim of discrimination and people just not liking me because I was black and/or female. Based on the size of my staff, my mission, and just a personal conviction, I work diligently not to have discrimination in the workplace. I am not going to carry that out as a program, and I am not going to allow it. It is not the right thing to do and I will not be doing it and do not do it. There is throughout the Service and in Michigan a mechanism for complaints. There is a complaint form poster at each location and in several locations in the district office, and it has an address on it. It has the address for the supervisor, but it also has my address on it and you can write directly to me. One can also write or call the Department of Justice, Inspector General's Office, and they will also take your complaint and investigate it, or they may forward it back to me to be investigated. And a person can do this anonymously.[10]

[9] Statement of Mohammad Elahi, Transcript

[10] Statement of Carol A. Jenifer, Transcript.

CHAPTER 6

Committee Observations

The U.S. Commission on Civil Rights is an independent, bipartisan agency of the federal government charged with studying discrimination or denials of equal protection on the basis of race, color, religion, sex, age, disability, or national origin. In each of the 50 states, an Advisory Committee to the U.S. Commission on Civil Rights has been established made up of responsible persons who serve without compensation to advise the Commission of all relevant information concerning its respective state on matters within the jurisdiction of the Commission.

To ensure its independence and bipartisanship, the Michigan Advisory Committee is constituted to include individuals representing both major political parties, a broad spectrum of political philosophies, different geographic regions of the state, and different occupations. It is independent of any national, state, or local administration, political organization, or advocacy group.

Profiling

Resulting from a 1997 report by the White House Commission on Aviation Safety and Security, a plan was implemented to augment security measures by complementing airline security checks with an automated passenger profiling system. By 1998, the Computer Assisted Passenger Screening (CAPS) system was operational industrywide.

Such profiling involves the collection of data on passengers prior to their boarding a plane. The information is entered into a computer database that determines whether the passenger poses a potential security risk and should be subjected to heightened security procedures. Different profiles are to be employed depending upon whether the travel is domestic or international.

The criteria for selection are secret. The Federal Aviation Administration denies that its profiling procedures are discriminatory and insists that the CAPS system does not target any group based upon race, national origin, or religion.

In addition to FAA security checks at most airports and border crossings, U.S. Customs officials can detain passengers for lengthy periods—sometimes days—without court approval in its attempts to interdict drugs and other contraband. When Customs believes there is reasonable suspicion of contraband with a traveler, Customs may detain a person and ask for the traveler's consent to medically supervised body searches. If consent is not given, Customs may proceed with X-rays and physical exams.

Regarding profiling, and its use by the federal government, the Michigan Advisory Committee observes that:

1. It is apparent that somehow and in some manner officials within the federal government have determined that Arab Americans and Muslims fit some common physical and/or traveling description of terrorists. This group of individuals is clearly being disproportionately selected by the FAA's Computer Assisted Passenger Screening system.

Committee Response: The Michigan Advisory Committee takes exception to the claim of Federal Aviation Administration officials that its profiling procedures are nondiscriminatory and the CAPS system does not target any group based upon race, national origin, or religion.

As long as the current system continues to discriminatingly target one particular ethnic and religious group, the Michigan Advisory Committee objects to its continued use.

2. Removing the profiling responsibility from local officials and centering the system in Washington, D.C., has not made the system racially and ethnically neutral. The fact that the system is now administered and controlled in the nation's capital does not by itself eliminate all vestiges of prejudice.

The Department of Justice did conduct a civil rights review of the automated passenger screening system prior to its implementation and found that the FAA's proposed Computer Assisted Passenger Screening system will not discriminate on the basis of race, color, national or ethnic origin, religion, or gender nor includes as a screening factor any passenger traits that may be directly associated with race, color, national or ethnic origin, religion, gender, surname, or mode of dress.

Committee Response: The U.S. Department of Justice's civil rights review of the CAPS system was conducted before the system was implemented industrywide. The FAA has relied on this study to justify the nondiscriminatory nature of CAPS. Since its implementation, however, the system seems to be operating in a discriminatory manner against Arab Americans and Muslims.

Both the CAPS system and the criteria for the profiling used by the CAPS system need a second independent review.

3. The basis of the Computer Assisted Passenger Screening system is secret. Compounding the secrecy of profile criteria, the test at Detroit Metropolitan Airport by the Executive Office of Wayne County demonstrates the inherent ambiguity over who has authority to profile. The airlines? Federal officials? Baggage inspectors?

Committee Response: The secrecy surrounding the profiling criteria used in CAPS is a serious problem. Further, who is responsible for administering the system?

The Michigan Advisory Committee holds that the American public has a right to understand the rudiments of the profiling criteria and who is responsible for administering the system and selecting those to be detained, questioned, and searched.

To date the CAPS system has yet to successfully identify any traveling terrorist.

Secret Evidence

The use of classified, or "secret," evidence in certain immigration proceedings was first authorized in 1955. Essentially, the use of secret evidence allows the Immigration and Naturalization Service of the U.S. Department of Justice to use as evidence during deportation proceedings information that is not shared with the individual facing deportation.

The lack of a defendant's access to the secret evidence makes it nearly impossible for him or her to make a defense against serious deportation charges and makes it possible for an individual with extensive family and community ties in the United States to be deported on the testimony of unnamed informants whose charges are taken as fact and cannot be challenged.

In 1996, following the World Trade Center and Oklahoma City bombings, Congress passed the Antiterrorism and Effective Death Penalty Act of 1996. Though the earlier 1955 provisions continue to be used as federal authorization for the use of secret evidence, one of the byproducts of the act has been the increased use of secret evidence in proceedings against immigrants.

While court rulings have held that residents in the United States are entitled to the same constitutionally guaranteed protections afforded to citizens, secret evidence is being introduced in trials across the country. The controversial provision has been used in approximately two dozen cases in which the Immigration and Naturalization Service asserted national security concerns as the basis for depriving immigrants of the right to examine and confront adverse witnesses and evidence. All of the cases are against Arab or Muslim immigrants.

Regarding the use of secret evidence, the Michigan Advisory Committee observes that:

1. In October 1999, a federal judge ruled that the use in court of secret evidence against immigrants is unconstitutional. The U.S. Constitution is the people's safeguard for their political and civil liberties.

Committee Response: Despite claims of national security, the Michigan Advisory Committee holds that this practice needs serious legal scrutiny. Since it has almost exclusively been directed against those from the Arab and Muslim communities, it is very difficult not to con-

clude that these cases are politically motivated proceedings targeting specific communities.

The rights to confront your accuser, hear the evidence against you, and secure a speedy trial are fundamental tenets of the American justice system embedded in the Constitution. The use of secret evidence violates those constitutional rights, and its continued use is a threat to the civil liberties of all Americans.

2. In Congress, a bipartisan group of House members, led by Rep. Tom Campbell (R-Calif.) and Rep. David Bonior (D-Mich.), introduced legislation to disallow the use of secret evidence. All members of Congress from the state of Michigan have given the legislation their support.

Committee Response: The Michigan Advisory Committee endorses legislation and regulatory changes to disallow the use of secret evidence.

Other Issues

Arab Americans and Muslims have suffered discrimination from employers, law enforcement officials, and service providers on the basis of their ethnicity and religion. Forms of discrimination may include a denial to Arab Americans with high levels of education the opportunity to work in the professional field of their training, refusal to hire Arab Americans who hold to different religious practices and/or different dress codes, a lack of accommodation by educators and service providers to individuals who adhere to different religions and/or dress codes, and a tendency by those in the entertainment industry to portray Arabs and Muslims in a negative light.

In our nation's recent history, thousands of Americans were unjustly imprisoned and denied their civil rights. The event was the internment of Japanese Americans during the Second World War.

The unprovoked actions by the federal government gave individuals the tacit license to be overtly hostile and discriminatory toward these individuals. The Michigan Advisory Committee concludes that:

1. The federal government's profiling system and selective use of secret evidence may be having a similar adverse effect on those in Arab and Muslim communities in this country. The permissive attitude by the federal government that allows its systems and programs to target the Arab community and the Muslim community may inadvertently be sending a message to the general populace that the Arab and Muslim communities are foreign and separate from the American mainstream, and as such are less deserving of civil rights and equal treatment.

To the Michigan Advisory Committee the abuses of the system against Arab and Muslim communities in profiling and secret evidence are clear. And failure to address them has worsened the situation for Muslims and those of Arab descent in this country.

Committee Response: The federal government needs to cease its targeting of the Arab and Muslim communities as suspect communities. Such targeting has complicated the access of many Muslims and Arab Americans into the mainstream of American society.

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Appendix

REPORT BY THE DEPARTMENT OF JUSTICE

TO THE DEPARTMENT OF TRANSPORTATION

ON THE DEPARTMENT'S CIVIL RIGHTS REVIEW OF THE

FEDERAL AVIATION ADMINISTRATION'S

PROPOSED AUTOMATED PASSENGER SCREENING SYSTEM

OCTOBER 1, 1997

REPORT BY THE DEPARTMENT OF JUSTICE TO THE DEPARTMENT OF TRANSPORTATION ON THE CIVIL RIGHTS REVIEW OF THE PROPOSED AUTOMATED PASSENGER SCREENING SYSTEM

At the request of the White House Commission on Aviation Safety and Security and the Department of Transportation, the Department of Justice has conducted a civil rights review of the automated passenger screening system now under development by the Federal Aviation Administration ("FAA") for implementation by domestic air carriers at airports located in the United States. The following constitutes the Report of the Department of Justice to the Department of Transportation on this review.

The Department of Justice's principal finding is that the FAA's proposed Computer Assisted Passenger Screening system ("CAPS") will not discriminate on the basis of race, color, national or ethnic origin, religion, or gender. CAPS has no knowledge of, and thus does not give any consideration to, the race, color, national/ethnic origin, religion, or gender of airline passengers. CAPS similarly does not include as a screening factor any passenger traits that may be directly associated with race, color, national or ethnic origin, religion, or gender, such as a passenger's name or mode of dress.

In order to further assure that airline passenger screening is implemented in a nondiscriminatory and appropriate manner, the Department of Justice is recommending that five steps be taken by the Department of Transportation and this Department. These steps involve the following:

1) the FAA should undertake regular, periodic reviews of CAPS (and any residual manual screening system) to ensure that the screening factors continue to be reasonable predictors of risk or the absence of risk;

2) the Department of Justice, with the assistance of the Office of the Secretary of Transportation and the FAA, should undertake a post-implementation review of CAPS (and any residual manual system), approximately one year after implementation begins, to ensure that selection in fact is not impermissibly being based on race, color, national or ethnic origin, religion, or gender, and should undertake additional reviews thereafter as appropriate;

3) the Office of the Secretary of Transportation and the FAA should expand their public education and outreach efforts to inform the American public about the purpose of airline passenger screening, as well as the right of passengers to file a complaint with the Department of Transportation if they believe they were the victim of discriminatory airline security procedures;

4) the FAA should require that domestic air carriers that implement CAPS (or any residual manual system) obtain pre-approval from the FAA before implementing any passenger screening system in addition to the screening procedures prescribed by the FAA, and the FAA should consult with the Department of Justice before approving any supplemental screening procedure; and

5) the FAA should require that air carriers implementing CAPS (or any residual manual system) establish procedures to ensure appropriate interactions between air carrier employees responsible for implementing passenger screening and airline passengers, and should provide appropriate training to these employees.

The FAA has advised that it is preparing to take the regulatory actions necessary to implement CAPS, and has established a target date for initial implementation of December 31, 1997.

Background

On February 12, 1997, the White House Commission on Aviation Safety and Security, chaired by Vice President Gore, issued its Final Report to President Clinton. The Commission was established by President Clinton immediately following the tragic crash of TWA Flight 800. The Commission made numerous recommendations regarding airline passenger security, aviation safety, air traffic control safety and efficiency, and responses to aviation disasters. The Commission concluded that among the steps that should be taken to improve airline passenger security is the implementation by the FAA of an automated system for screening airline passengers flying out of airports located in the United States, and noted with approval the efforts already underway by the FAA to develop CAPS.

The Commission understood that care must be taken in implementing automated passenger screening so that there is no infringement on the civil liberties of American citizens. The Commission, accordingly, convened a panel of civil liberties experts from outside government to provide appropriate guidance. Based on the proposals made by this panel, the Commission recommended eight civil liberties safeguards.

Most importantly, the Commission recommended that the Department of Justice review the FAA's automated passenger screening system before implementation "to ensure that selection is not impermissibly based on national origin, racial, ethnic, religious or gender characteristics."[1] The Commission further recommended that the Department periodically review the FAA's

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[1] Final Report, at 35.

screening standards following implementation. The Commission decided not to accept a proposal of its Civil Liberties Advisory Panel that an outside, independent panel be created to monitor airline passenger screening. Instead, the Commission asked that the Justice Department, working with the Department of Transportation, consider this proposal and create an outside panel if that is deemed necessary.[2]

Shortly after the White House Commission submitted its report, the Department of Transportation asked the Department of Justice to carry out the review recommended by the Commission. Responsibility for conducting the review was assigned to the Department's Civil Rights Division, with assistance to be provided by the Department's Criminal Division and the Federal Bureau of Investigation.

The FAA has provided the Justice Department with detailed briefings about the CAPS screening factors and procedures, the FAA's existing manual screening system (which has been in use since the fall of 1995 and which CAPS generally will replace), and other related matters. In addition, Northwest Airlines, which is assisting in the development of CAPS pursuant to a grant from the FAA, provided the Department with a CAPS demonstration and with data from a CAPS field test conducted by Northwest.

The Department of Justice (along with representatives from the Office of the Secretary of Transportation and the FAA) met with the White House Commission's Civil Liberties Advisory Panel and with other civil liberties and civil rights advocates. As part of those discussions, the advocates forwarded a number of recent individual airline passenger complaints that allege discrimination on the basis of national/ethnic origin, nationality, or religion in the application of airport security procedures.[3] The meetings with the Advisory Panel and with advocacy groups were of great assistance in elucidating the concerns and questions that exist about airline passenger screening, and in focusing the Department on areas where recommendations for additional actions might be appropriate.

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[2] Appendix A to this Report quotes the White House Commission's recommended civil liberties safeguards in full.

[3] We are informed that the Department of Transportation currently is investigating these complaints.

Overview of the CAPS System[4]

The purpose of screening passengers at domestic airports, as described by the White House Commission and the FAA, is to identify a small percentage of passengers to whom a heightened security measure should be applied. The White House Commission explained: "Based on readily-available information, passengers could be separated into a very large majority about whom we know enough to conclude that they present little or no risk, and a small minority about whom we do not know enough and who merit additional attention."[5] With regard to that small minority, neither CAPS nor the FAA's existing manual screening system is designed or intended to identify persons who in any sense are likely terrorists. Clearly, on any one day, it is highly probable that all the selectees will be individuals with no connection to terrorism. Notwithstanding that fact, it is the judgment of the White House Commission and the FAA that the terrorist threat is sufficiently great, and the consequences of airline terrorism so horrendous, that security measures that cannot practically be applied to all passengers flying out of U.S. airports on domestic airlines should be applied to a portion of the passenger population. Passenger screening shrinks the number of passengers to whom an additional security measure is to be applied to a manageable size based on an intelligence judgment as to where in the sea of passengers a terrorist could be waiting.[6]

As is true for other FAA security measures implemented at U.S. airports, responsibility for implementing CAPS will rest with U.S. air carriers, and CAPS will operate on the air carriers' computer reservation systems. Except for one limited category of domestic air carriers, CAPS will apply to passengers traveling on all U.S. air carriers departing on domestic flights from American airports. The exception will be those few domestic air carriers that do not utilize a computer reservation system to

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[4] The description of CAPS and related security procedures set forth below is intended to convey the factual foundation for the Department of Justice's findings and recommendations. The description is not intended to supplant the FAA's regulatory process or in any manner pre-determine what the result of that process will be. However, the FAA advises that the key features of CAPS and related security procedures essentially are set and thus are ripe for review by the Department of Justice at this time.

[5] Final Report, at 35.

[6] The additional security measures are aimed at both searching for any terrorist that may be present and deterring terrorists from targeting our nation's air transportation system.

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which CAPS can be appended; for these carriers, the FAA may require the continued use of a manual screening system. The FAA's present intent is that CAPS also will operate on a portion of the international flights by U.S. air carriers outbound from the United States; however, at least at this time CAPS will not apply to international flights by U.S. air carriers to the United States. CAPS will not apply to foreign air carriers flying from or to the United States.[7]

Like the FAA's existing manual screening system, CAPS will rely solely on information that passengers otherwise provide to air carriers in the normal course of business for reasons unrelated to screening. CAPS will not prompt the gathering of any additional information by the federal government or air carriers, and is not connected to any law enforcement or intelligence database.

Like the existing manual system, CAPS will screen passengers by analyzing passenger information relating only to the current travel of each passenger. CAPS will accomplish this by utilizing both positive and negative factors — positive factors weigh against selection and negative factors weigh in favor of selection — and each factor has an FAA-assigned positive or negative score.[8] In order to determine whether a passenger should be selected, the airline reservation computer identifies the factors that the passenger has hit upon and totals the positive and negative scores; those passengers who score below the FAA-prescribed cut-off are selectees. In addition, pursuant to a recommendation of the White House Commission and its Civil Liberties Advisory Panel, CAPS will include as selectees a limited number of passengers randomly chosen by the computer who were not selected by the screening factors.

When passengers either check-in or purchase a ticket at the airport, the reservation computer will inform the airline employee whether each passenger is a selectee or not. The computer will not inform the employee whether the selection was based on the screening factors or random selection, and will not inform the employee of the passenger's CAPS score. CAPS scores

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[7] Unlike domestic flights, international flights by both U.S. and foreign air carriers are subject to the security requirements of the International Civil Aviation Organization. The FAA also imposes security requirements on international flights to and from the United States, including screening requirements at certain foreign airports. These screening provisions are unrelated to CAPS or the existing manual screening system which the FAA has mandated for use at domestic airports.

[8] By necessity, the factors themselves must remain confidential and cannot be identified here.

of individual passengers will not be retained by the air carriers or the federal government.

The FAA advises that there are several reasons why CAPS represents a significant improvement over the existing manual screening system. Computerization allows for a more sophisticated, precise, and comprehensive use of the information provided by airline passengers to their air carriers. It also permits the establishment of a more controlled system for applying the screening factors by eliminating the need for airline check-in agents to apply the selection decision rules established by the FAA; this, in turn, eliminates the possibility of an airline employee misapplying the selection rules.

The FAA's present intent is that the additional security measure applied to CAPS selectees (and selectees pursuant to any residual manual screening system) will concern their checked luggage only. Depending on the destination of the passenger (domestic or foreign) and the availability of advanced technology at particular airports, the additional security measure applied to selectees typically will involve one of the following: bag matching (the requirement that checked luggage be flown only if it is determined that the passenger who checked the luggage has boarded the airplane); examination by a certified explosive detection system (EDS); or examination using other advanced technology (such as an explosive detection device or a trace detector).

Currently, both the checked luggage and the carry-on luggage of passengers selected by the manual screening system are subjected to a heightened security examination at domestic airports. The FAA advises that the carry-on items of CAPS selectees (and selectees pursuant to any residual manual system) will not be treated differently from the carry-on items of non-selectees, due to ongoing improvements that are being made by the FAA in examining the carry-on luggage of all passengers.[9]

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[9] The FAA notes that the level of security review applied to CAPS selectees might increase if the terrorist threat were to markedly worsen. The FAA also notes that security measures may change as advancements are made in security technology and in training security personnel. For example, as recommended by the White House Commission, passenger screening could end if and when EDS is available at all domestic airports to examine all passengers' checked luggage.

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Department of Justice Findings

The findings of the civil rights review conducted by the Department of Justice are as follows:

1. CAPS fully complies with the equal protection guarantee incorporated in the Fifth Amendment to the Constitution. CAPS will not impermissibly select passengers for heightened security measures on the basis of race, color, national or ethnic origin, religion, or gender.

a. CAPS does not include as a screening factor the race, color, national/ethnic origin, religion, or gender of passengers, and does not include as a screening factor any characteristic (such as a passenger's name or mode of dress) that may be directly associated with race, color, national or ethnic origin, religion, or gender.

b. Neither the Constitution nor any federal statute prohibits the implementation by the FAA of security measures that have an unintended discriminatory effect. However, in light of the concerns expressed to us by civil rights advocates and the fact that many of the civil rights statutes enforced by this Department include an "effects" standard, the Department of Justice has considered this issue. Our evaluation indicates that CAPS will not have any unjustified disparate impact on any group of passengers; however, this is an issue that should be closely monitored in the future.

c. To a limited degree, CAPS distinguishes between American citizens and passengers traveling on the passport of a foreign country. CAPS' narrowly defined reliance on alienage is fully justified and is constitutional.

2. CAPS does not violate the Fourth Amendment prohibition on unreasonable searches and seizures. CAPS itself involves no "search" or "seizure;" nor does bag matching, pursuant to CAPS, occasion any "search" or "seizure." A search of a selectee's luggage pursuant to CAPS, such as by an EDS screening, is a permissible extension of the constitutional administrative search procedures that operate at airports today.

3. CAPS does not involve any invasion of passengers' personal privacy. CAPS does not create any new database on passengers and is not linked to any database other than the existing airline computer reservation systems. CAPS selectee results will not be retained on a personally identifiable basis and the information used to calculate each CAPS result will not be retained on computer by the airline reservation systems.

4. We also conclude that the existing manual screening system, which the FAA has advised may continue in effect on a limited basis after CAPS is implemented, is constitutional and does not involve any impermissible discrimination or invasion of personal privacy.[10]

Department of Justice Recommendations

Based on the review conducted by the Department of Justice, the Department believes that there are a number of steps that the Department of Transportation and the Department of Justice should take to further ensure that passenger screening is implemented in a nondiscriminatory and appropriate manner. These recommendations (which to some extent incorporate actions that the Department of Transportation already is intending to implement) are as follows:

1. *Regular and periodic reviews by the FAA:* As is contemplated by the FAA, the FAA should periodically review the screening factors used in CAPS (and any residual manual screening system) to ensure that the factors continue to be reasonable predictors of risk or the absence of risk. Such reviews should occur on at least a yearly basis. Also as proposed by the FAA, the FAA should ensure that CAPS is capable of generating statistical reports on its operational results, so long as the information reported is not personally identifiable to any individual passenger.

2. *Post-implementation civil rights review by the Department of Justice:* The Department of Justice should undertake a post-implementation review of CAPS (and any residual manual screening system), approximately one year after implementation begins, to ensure that selection in fact is not impermissibly being based on race, color, national or ethnic origin, religion, or gender. The Office of the Secretary of Transportation and the FAA should assist in this review by

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[10] The Department of Justice was not asked in this review to conduct an investigation of whether any air carriers (or individual employees of air carriers) may be implementing screening requirements, in addition to those mandated by the FAA, which may be discriminatory, and thus the Department makes no findings on that issue. The FAA advises that domestic air carriers generally simply follow FAA security procedures, although federal law allows air carriers to supplement those procedures subject to FAA regulation. As matters now stand, the FAA generally does not limit the air carriers' discretion in this regard. As noted above and discussed in greater detail below, the Department is recommending that the FAA increase its regulation of any supplemental passenger screening procedures that U.S. air carriers may seek to enforce.

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providing the Department of Justice with information describing CAPS implementation. This should include: a description of any reassessment of the screening factors by the FAA, statistical data describing the population of selectees, a summary of all complaints received by the Department of Transportation alleging a discriminatory application of airport security measures, the results of the complaint investigations, and a description of any alterations in the screening factors or related security procedures that have been implemented or which are being considered for future implementation. Thereafter, additional reviews should be conducted by the Department of Justice as appropriate.

3. *Education and outreach efforts:* The Office of the Secretary of Transportation and the FAA should expand their public education and outreach efforts to inform the American public about the purpose of airline passenger screening, as well as the right of passengers to file a complaint with the Department of Transportation if they believe they were the victim of discriminatory airline security procedures.

4. *Regulating any supplemental air carrier screening efforts:* The FAA should prohibit domestic air carriers from altering CAPS (or any residual manual screening system) unless approved by the FAA. The FAA further should require domestic air carriers to obtain pre-approval from the FAA if and when any carrier proposes to implement any supplemental screening system.[11] Should the FAA receive a request from an air carrier to alter or supplement the screening procedures prescribed by the FAA, the FAA should consult with the Department of Justice with regard to whether the proposal involves any impermissible discrimination.

5. *Ensuring appropriate interactions between air carrier employees and airline passengers:* The FAA should require that domestic air carriers establish procedures for implementing CAPS (and any residual manual system) that ensure that screening is implemented in a nondiscriminatory manner, that selectees are treated in a courteous, respectful, and non-stigmatizing manner, and that any heightened security measure applied to selectees is effectuated so as to minimize the extent to which the selected passenger or any other member of the general public is aware of the measure being applied.

These procedures should include providing training to all

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[11] This pre-approval recommendation is not meant to apply to airline security provisions that concern passengers who are acting in a manner that poses a threat to the safety of other persons, or who are acting in a manner that reasonably suggests that they may pose a threat to the safety of other persons.

personnel who interact with passengers and are involved in applying CAPS or any manual system. The training should include: an explanation of the purpose of screening (including an explanation that selection does not imply that a passenger is suspected of planning or engaging in any illegal activity); a description of the manner in which CAPS (and manual screening) has been designed to select passengers on a nondiscriminatory basis (consistent with maintaining the confidentiality of the screening factors); an advisory that CAPS selectees include some number of passengers chosen at random; an advisory that CAPS is not connected to any law enforcement or intelligence database; instruction on treating selectees in a courteous, respectful, and non-stigmatizing manner that minimizes any overt identification of the passenger as a selectee; and instruction that personnel may not implement any screening other than the FAA-prescribed system, except where the air carrier has obtained the requisite approval from the FAA for a modified or supplemental system.

In light of these findings and recommendations, the Department of Justice does not believe that there is any present need for the creation of an independent, outside panel to monitor airline passenger screening. The Department will reconsider this issue in conducting its post-implementation review of the FAA's airline passenger screening measures.

Finally, the Department of Justice joins in endorsing the civil liberties safeguards recommended by the White House Commission on Aviation Safety and Security. To a significant extent, these safeguards have been effectuated by the preparation of this Report or are reflected in this Report's recommendations.

Conclusion

The FAA's proposed automated airline passenger screening system, as designed, will not infringe the civil rights or civil liberties of American citizens. The FAA has taken great care in designing CAPS so as to respect Americans' cherished civil rights and civil liberties, and the Department of Justice has conducted a detailed and comprehensive review of the FAA's proposal. The Department of Justice will continue to closely monitor the FAA's passenger screening procedures to ensure that they remain nondiscriminatory.

Appendix A

Civil Liberties Safeguards Recommended by the White House Commission on Aviation Safety and Security for Implementing Automated Passenger Screening

1. No profile should contain or be based on material of a constitutionally suspect nature e.g., race, religion, national origin of U.S. citizens. The Commission recommends that the elements of a profiling system be developed in consultation with the Department of Justice and other appropriate experts to ensure that selection is not impermissibly based on national origin, racial, ethnic, religious or gender characteristics.

2. Factors to be considered for elements of the profile should be based on measurable, verifiable data indicating that the factors chosen are reasonable predictors of risk, not stereotypes or generalizations. A relationship must be demonstrated between the factors chosen and the risk of illegal activity.

3. Passengers should be informed of airlines security procedures and of their right to avoid any search of their person or luggage by electing not to board the aircraft.

4. Searches arising from the use of an automated profiling system should be no more intrusive than search procedures that could be applied to all passengers. Procedures for searching the person or luggage of, or for questioning, a person who is selected by the automated profiling system should be premised on insuring respectful, non-stigmatizing, and efficient treatment of all passengers.

5. Neither the airlines nor the government should maintain permanent databases on selectees. Reasonable restrictions on the maintenance of records and strict limitations on the dissemination of records should be developed.

6. Periodic independent reviews of profiling procedures should be made. The Commission considered whether an independent panel be appointed to monitor implementation and recommends at a minimum that the DOJ, in consultation with the DOT and FAA, periodically review the profiling standards and create an outside panel should that, in their judgment, be necessary.

7. The Commission reiterates that profiling should last only until Explosive Detection Systems are reliable and fully deployed.

8. The Commission urges that these elements be embodied in FAA standards that must be strictly observed.

Final Report to President Clinton, at 35-36.

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